

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2018

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.Nos.29213 and 29855 of 2018
& W.M.P.Nos.34139 and 34854 of 2018

B.Satish,
S/o.Babulal,
Proprietor of "Shivaay Restaurant",
No.29/15, Millers Road,
Kilpauk, Chennai-600 010.

.. Petitioner in both WPs

Vs.

1. The Commissioner of Police,
Chennai City Police,
Vepery, Chennai-600 007.
2. Deputy Commissioner of Police,
Kilpauk Police Station, Kilpauk Range,
Poonamallee High Road,
Chennai-600 010.
3. Assistant Commissioner of Police,
Kilpauk Police Station, Kilpauk Range,
Poonamallee High Road,
Chennai-600 010.
4. Inspector of Police,
Kilpauk Police Station,
Poonamallee High Road,
Chennai-600 010.
5. Sub Inspector of Police,
Kilpauk Police Station,
Poonamallee High Road,
Chennai-600 010.

.. Respondents in W.P.
No.29213 of 2018

1. The Additional Commissioner of Police (Traffic),
Greater Chennai Police,
Vepery, Chennai-600 007.
2. The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai-600 003.

3. The Zonal Officer,
Zone 8, Greater Chennai Corporation,
Rippon Building,
Chennai-600 009.

4. The Assistant Revenue Officer,
Zone 8, No.36B, 2nd Cross Street,
Pulla Avenue, Shenoy Nagar,
Chennai-600 030.

5. The Executive Engineer,
Zone 8, No.36B, 2nd Cross Street,
Pulla Avenue, Shenoy Nagar,
Chennai-600 030.

6. The Assistant Engineer,
Zone 8, No.36B, 2nd Cross Street,
Pulla Avenue, Shenoy Nagar,
Chennai-600 030.

.. Respondents in W.P.
No.29855 of 2018

* * *

Prayer in W.P.No.29213 of 2018 : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents to remove the lock from the petitioners restaurant at No.29/15, Millers Road, Kilpauk, Chennai-600 010, and permit the petitioner to run the restaurant " SHIVAAY" in accordance with the provisions of Act 34 of 2008 and the rules made thereunder.

Prayer in W.P.No.29855 of 2018 : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the first respondent to issue the NOC to the petitioners restaurant at No.29/15, Millers Road, Kilpauk, Chennai-600 010, under Section 3592) of the Chennai City Police Act, 1888 and consequently direct the second respondent to grant the trading license on the application dated 27.07.2018 submitted by the petitioner.

* * *

For Petitioner in both :Mrs.Nalini Chidambaram,
WPs Senior Counsel for Mr.L.P.Maurya

For Respondents in :Mr.S.R.Rajagopal,
W.P.No.29213 of 2018 Additional Advocate General
and for Respondent No.1 assisted by Mr.V.Shanmugasundar,
in W.P.No.29855 of 2018 Special Government Pleader

For Respondents 2-6 in : Mr.G.Anantharangan
W.P.No.29855 of 2018 Standing Counsel

C O M M O N O R D E R

The petitioner is the proprietor of a restaurant being run under the name and style of "Shivaay Restaurant" at No.29/15, Millers Road, Kilpauk, Chennai. It is stated that he had also obtained license from the Food Safety Authorities on 23.08.2017. The said restaurant has a separate smoking zone in accordance with the rules and regulations set out in the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (hereinafter referred to as "COTPA Act") read with the Prohibition of Smoking in Public Places Rules, 2008.

2. It is claimed by the petitioner that the restaurant has been offering hookah to the customers inside the smoking room and only persons above the age of 18 years are allowed inside. The restaurant was opened in the month of February 2018. It is alleged that the fourth respondent-Inspector of Police has been visiting the restaurant and threatening the petitioner with dire consequences to close the restaurant. It is further alleged that the fourth respondent had been threatening the customers, who visit the restaurant. In fact, the petitioner had filed CrI.O.P.No.2670 of 2018 and sought for a direction to restrain the respondents from harassing him in the guise of enquiry and the said petition was allowed by this Court. However, it is alleged that the fourth and fifth respondents entered the restaurant and seized all the hookah equipments without authority.

3. While so, the petitioner filed W.P.No.8027 of 2018 seeking a direction to the Commissioner of Police not to interfere in the peaceful running of the restaurant, wherein, this Court gave an interim direction on 09.04.2018 as prayed. It is alleged that on 01.05.2018 at about 10.30 p.m., the fourth respondent alleged to have assaulted the customers by dragging them out of the restaurant and threatened them not to visit the place again. The fourth respondent had registered a false complaint against the petitioner in Crime No.229 of 2018 on 12.05.2018. The petitioner filed Contempt Petition No.1474 of 2018 for floating the interim orders of this Court. This Court directed the respondents to take videograph, whenever they visit the restaurant.

4. Despite the above facts, on 21.10.2018, the fourth and fifth respondents entered the petitioner's restaurant and assaulted the Manager and forced him to lodge a false complaint. The respondents had conducted illegal raids and also seized hookah equipments from the smoking room of the restaurant, according to the petitioner. It is his further case that the respondents also had locked the premises restraining the

petitioner from conducting his business during the festival season of Deepali.

5. Challenging the said locking of the premises, W.P.No.29213 of 2018 is filed seeking a mandamus to remove the lock from the petitioner's restaurant at No.29/15, Millers Road, Kilpauk, Chennai-600 010, and to permit the petitioner to run the restaurant.

6. While so, it is alleged that the officials of the Greater Chennai Corporation had affixed seal on the restaurant on 10.11.2018. Hence, the petitioner filed W.P.No.29855 of 2018 seeking a direction to the first respondent - Additional Commissioner of Police (Traffic) to issue a No Objection Certificate (NOC) to the petitioner under Section 35 (2) of the Chennai City Police Act, 1888 to enable him to obtain trade license.

7. The third respondent in W.P.No.29213 of 2018 and the first respondent in W.P.No.29855 of 2018 had filed separate counters. It is the specific allegation of the respondents that the petitioner was never running the restaurant business for the purpose of serving food, but he was running only as hookah parlour. It is stated that three cases had already been registered against the petitioner restaurant under the COTPA Act. It is denied in the counters that the petitioner does not have trade license or any license to run the restaurant and the purported license issued by the Food Safety authorities expired and it concerned with standard of quality of the food only. As the petitioner did not have a valid trade license for running the restaurant, the authorities had to seal the same on 10.11.2018.

7.1. It is further submitted that the CCTV Footage obtained from the petitioner's premises would go to show that the entire premises was only used for offering hookah to the customers and was never catering any food to the customers. Hence, the restaurant was sealed. On the date on which the premises was sealed, i.e., on 10.11.2018, when the respondent - police authorities entered the premises, many of the customers were in intoxicated state. The authorities entered the premises only on a distress call from one of the customers, who had complained about drowsiness and ill-health at the restaurant. Therefore, the police authorities entered the premises, seized the hookah samples under cover mahazar and sent the same to the forensic laboratory. Many of the visitors had by then, managed to escape, including the owner of the premises. Therefore, to ensure the safety of the restaurant and to protect the evidence and also to collect the evidences such as Digital Video Recorder (DVR), hookah samples, etc., the respondents had locked the restaurant, after informing the Manager of the restaurant and kept the keys with them.

7.2. It is also stated in the counters that during the investigation, it is found that the petitioner and his men violated the rules and regulations and also allowed the premises to cause public nuisance. Hence, the officials of the Corporation of Chennai had to take legal action by lock and seal of the petitioner restaurant on 10.11.2018 for not obtaining valid trade license and there was no mala fide or malice intention on the side of the respondents and they had acted only in accordance with the statute.

8. The third respondent in W.P.No.29855 of 2018 filed a counter-affidavit dated 15.11.2018 on behalf of the Corporation of Chennai. It is stated in the First Bench judgment of this Court dated 31.03.2015 made in W.P.No.33821 of 2014, a direction was issued to obtain a parking area availability report from the police authorities before issuing license. Accordingly, the application submitted by the petitioner restaurant for trade license on 12.01.2018 was forwarded to the first respondent, who in turn, rejected the NOC in the letter dated 16.08.2018. Consequently, the application of the petitioner was rejected on 04.09.2018. Based on the letter of the fourth respondent in W.P.No.29213 of 2018 that since the petitioner restaurant has been functioning without any valid license, suitable action may be taken, the Corporation of Chennai sealed the petitioner restaurant on 10.11.2018.

9. Heard the learned Senior Counsel appearing on behalf of the petitioner in these writ petitions and the learned Additional Advocate General appearing on behalf of the official respondents and the learned Standing Counsel for the Corporation of Chennai.

10. This is a classic example of violation of the statutes by an establishment. Admittedly, the petitioner had not obtained trade license under Section 365 (10) of the Chennai City Municipal Corporation Act, 1919. It is the case of the petitioner that though the license was applied under the above said provision, the same had not been issued by the authorities within the time frame specified therein and hence, the license is deemed to have been issued. However, obtaining NOC from the police authorities – first respondent in W.P.No.29855 of 2018 is a pre-condition for obtaining trading license. The Hotels, depending upon its category, should have parking facility for a particular number of vehicles, both two wheelers and four wheelers, for seeking NOC. Admittedly, the premises, in which, the petitioner restaurant is housed does not have the required parking space.

11. The learned Senior Counsel appearing for the petitioner submitted that the enquiry or raid ought to have been conducted in the presence of the proprietor after due intimation, which

would have enabled them to explain to the authorities as to the arrangement made by the restaurant for the purpose of parking vehicles of the customers. In other words, it is stated that the petitioner had made an arrangement to park the vehicles in an adjacent building. However, the learned Additional Advocate General denied the said fact and produced the photographs of the adjacent building, where the petitioner claimed to have made arrangement for parking, to show that the said building is pulled down and only debris is lying there. Therefore, the statement of the petitioner is unacceptable.

12. Even though there is a deeming provision, the petitioner ought to have furnished the NOC from the traffic police authorities. The NOC could be provided only when the conditions contained under Section 35(2) of the Chennai City Police Act, 1988 are fulfilled, which includes availability of sufficient space for parking facility. It is fairly admitted by the learned Senior Counsel for the petitioners that as on the date, when the cause of action arose, there was no parking facility available, however, the petitioner restaurant made arrangements for parking of the vehicles of the customers. Even otherwise, the parking space should be enclosing the restaurant and cannot be away from the place of business.

13. It is the specific case of the petitioner that since they have submitted the application for trading license, which was neither accepted nor rejected, the petitioner had deemed that the license had been issued. The said argument cannot be countenanced for a moment, as in their letter dated 31.10.2018 addressed to the Assistant Revenue Officer, Zone 8, Greater Corporation of Chennai, the petitioner had specifically stated that his application for Corporation license was rejected due to lack of parking space and the NOC from traffic police authorities. The argument that the petitioner availed 1500 sq.ft. of land for valet parking in the building next to the restaurant for parking four cars and fifteen two wheelers is also rejected by the authorities.

14. When there is every violation of the statute by the petitioner, he cannot demand for issuance of the trading license or de-sealing the premises, which were rightly done by the authorities. If the petitioner is allowed to carry on the trading, in which, he is indulged in, which itself is controversial, it would be detrimental to the society. The violation of the statute by the petitioner certainly would cause injury to the society. The petitioner has not established that they are catering food in the restaurant along with the specifically designated area for smokers, where he was offering hookah to the customers, besides, there is no parking facility as required for the said premises.

15. Though the results of the hookah samples collected from the place of occurrence is yet to come from the forensic laboratory, it is known universally that consumption of tobacco or products made with tobacco will cause health-hazards.

16. The intention of the Legislature in making the statutory provisions so stringent is only with an endeavor to safeguard the public health, which is one of the primary duties of the State. The said regulation and fixing of standards is only to have control over the trade in vending intoxicating commodities. The petitioner had violated the provisions of Chennai City Municipal Corporation Act, Chennai City Police Act read with Prohibition of Smoking in Public Places Rules, 2008.

17. By violating the above statutes, the petitioner had been negligent of following the rules prescribed and the standards defined. In such a case, the usual negligence standards of the reasonable person are only superseded by the more stringent standards set out by the Statutes. Any statute is legislated only to enforce the liability. The violation of these statutory provisions by the petitioner only invokes the liability, especially when these statutes are intended to protect the public from any harm. As the statutory violations are certainly negligence per se the act of the authorities cannot be said to be mala fide.

18. From the above facts, it is very clear that the petitioner had violated every condition required for the purpose of running a restaurant with the hookah bar. Hence, the prayer sought for in both the writ petitions cannot be entertained and the same fail.

19. However, it is open to the petitioner to apply afresh to the authorities concerned, after complying with the conditions required for the purpose of running the said business. If the petitioner complies all the necessary statutory norms and conditions, it is open to the statutory authorities to accord appropriate license and permission to the petitioner, in the manner known to law.

20. With these observations, the writ petitions are disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

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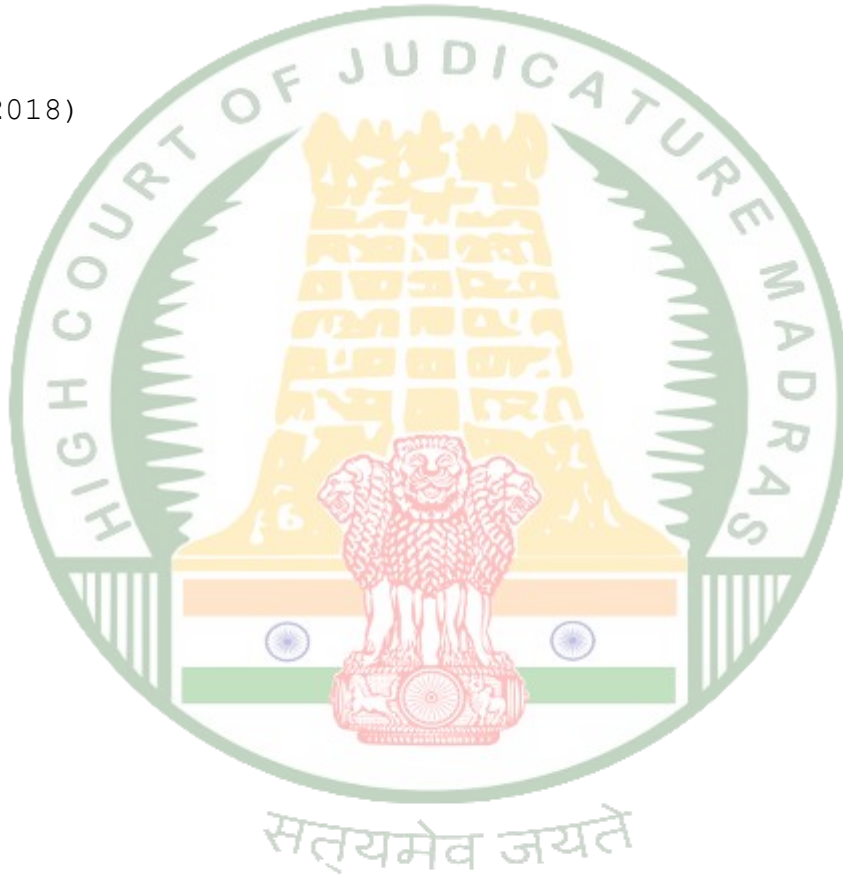
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+2 Ccs to Mr.L.P.Maurya, Advocate sr 79472 & 79473.
+1 CC to The Govt. Pleader sr 79748.

W.P.Nos.29213 and 29855 of 2018

EV(CO)
SP(29/11/2018)



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